

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

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In the matter of the petition of

DYNAMIC AVIATION GROUP, INC.

for an exemption from § 137.53(C) (2) *
of Title 14, Code of *
Federal Regulations *

Regulatory Docket No. FAA-2002-12484

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GRANT OF EXEMPTION

By letter dated June 10, 2002, and subsequent telephone conversations on June 17 and 18, 2002, with Mr. Wayne Cummings, Director of Operations, Dynamic Aviation Group, Inc. (Dynamic), 1402 Airport Road, Bridgewater, Virginia, 22182 petitioned the Federal Aviation Administration (FAA) for an exemption from § 137.53(c) (2) of Title 14, Code of Federal Regulations (14 CFR). Mr. Cummings requested an exemption to the extent necessary to permit pilots employed by Dynamic to conduct aerial applications of insecticides or pheromones from aircraft not equipped with a load jettisoning system. The aircraft to be used is a Beechcraft King Air 65A90, registration number N7199D, which is not equipped with a device to release at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds.

The petitioner requests relief from the following regulation:

Section 137.53(c) (2) prescribes, in pertinent part, that in operations over congested areas, aircraft other than helicopters must be equipped with a device capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural material within 45 seconds. If the aircraft is equipped with a device for releasing the tank or hopper as a unit, there must be a means to prevent inadvertent release by the pilot or other crewmember.

The petitioner supports its request with the following information:

The petitioner states that it operates a public health aerial spray program for mosquito and gypsy moth abatement and is responsible for providing a demonstration of capability to the United States Forest Service. The current contract for demonstration is for the aerial spraying of pheromones over the gypsy moth habitat. The pheromone is sprayed in the form of flakes, which are coated with a substance that provides a means of adherence to the sprayed surface. The petitioner

states that while the flakes are not dangerous or toxic, a large amount of the substance deposited in one concentrated area or on a person would attract a large number of moths to that location or person for up to 3 to 4 weeks.

The petitioner also states that they provide aerial spraying for the abatement of mosquitoes and utilize pesticides such as Malathyon, Dibrom and Anvil at ultra-low-volume (ULV) amounts of 1/2 to 1 ounce per acre. The petitioner states that Dibrom, Anvil and other ULV labels contain information about the proper dosage, application, and handling of the chemicals. According to the petitioner, Federal law requires the petitioner to spray the insecticide in accordance with the manufacturer's recommended instructions on the label. In addition, data from the chemical manufacturer and the Environmental Protection Agency support strict adherence to label instructions. The petitioner claims that compliance with § 137.53(c)(2) would constitute a violation of Federal law. Using a dump valve to dispense the chemical into the atmosphere in doses that exceed the manufacturer's recommended doses would produce a widespread contamination hazard affecting major waterways and all forms of animal and aquatic life. The petitioner believes that deviating from the labeled instructions would clearly pose a greater health and environmental hazard than any potential aircraft problem.

The petitioner operates Beechcraft King Air Models 65A90-1 and 65A90-4. The aircraft to be used in the pheromone spraying operation is registered as N7199D. The maximum gross takeoff weight for the aircraft is 10,200 pounds. The petitioner states that no aircraft will be loaded over the maximum published gross weight as per the FAA approved flight manual. In all cases, the aircraft will have sufficient single engine performance to meet the climb requirements of § 137.51.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because the exemption, if granted, would not set a precedent, and any delay in acting on this petition would not be in the public interest.

The FAA's analysis/summary is as follows:

The requirements of part 137 are directed at the safety of agricultural aircraft operations, the dispensing of materials during such operations, and the protection of persons and property on the ground. The FAA has not attempted to establish flight procedures for specific crops or to direct the use of particular application techniques, nor do the rules prescribe the kinds of chemicals or other materials to be used. However, part 137 prohibits the dispensing of an economic poison for a use other than that for which it is registered with the U.S. Department of Agriculture, which has Federal responsibility for economic poisons registered for use.

The FAA is aware that many agricultural operations are unique because of such variables as size, shape, and location of the area; obstacles in the vicinity of each operation; altitude and airspeed programmed for the aircraft; type and toxicity of the chemical to be dispensed; and the type of aircraft used in the operation. The intent of

§ 137.53(c)(2) is to provide the pilot with a means of dumping the chemical if an emergency situation occurs. The FAA has determined that the petitioner's proposed operation can be conducted with a level of safety equivalent to that provided by the regulations because the aircraft has two-engine reliability and single-engine performance capability, which permit the aircraft to fly to a safe area in the event of an engine failure. In addition, the aircraft used for this proposed operation will be operated at a gross weight less than the maximum allowed. The pilots used in the operation will have experience in excess of the regulatory requirements. By operating the aircraft at a sufficiently fast speed and at a gross weight to ensure single-engine climb capability during spray operations, and by using crewmembers who are highly experienced, the petitioner provides an equivalent level of safety in this unique operation.

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, Dynamic Aviation Group, Inc. is granted an exemption from 14 CFR § 137.53(c)(2) to the extent necessary to permit Dynamic to conduct aerial applications of insecticide materials from a King Air 65A90 aircraft (Registration No. N7199D) without the aircraft being equipped with a device that is capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operating over a congested area. This exemption is subject to the following conditions and limitations:

1. This exemption is limited to Beechcraft King Air 65A90 aircraft.
2. The authority of this exemption is to be used only in conjunction with conducting aerial agricultural operations.
3. During spray operations, aircraft operated in conjunction with this exemption are limited to a maximum gross weight that will ensure a single-engine climb performance capability of at least 200 feet per minute positive rate at the prevailing density altitude. Under no condition will the aircraft's gross weight exceed 10,200 pounds.
4. Prior to each flight, a document must be prepared showing the weight and balance calculations and the altitude performance for the forecast operating density altitude. The document must be retained for at least 30 days and must be presented upon request to the FAA inspector assigned to oversee the petitioner's Part 137 operation.
5. Each pilot in command (PIC) of aircraft operated under this exemption must have a total of at least 1,200 hours of flight time as pilot, including at least 200 hours of PIC time in King Air 65A90 aircraft, 50 flight hours of which must have been in agricultural spray operations.
6. A copy of this exemption must be provided to each PIC who operates under the terms of this exemption.

7. Prior to operating under this exemption, each PIC must have successfully completed flight instruction from an appropriately-rated flight instructor on single-engine operations, performance, and handling characteristics of the King Air 65A90 aircraft. A record of this instruction must be made available by the PIC upon the request of the Administrator.

In an effort to allow the public to participate in tracking the FAA's rulemaking activities, we have transitioned to the Department of Transportation's Internet-accessible Docket Management System (DMS), located at <http://dms.dot.gov>. This new system enables interested persons to submit, view, and download requests to the DMS in accordance with 14 CFR § 11.63. Future requests should be submitted through this system.

This exemption terminates on July 31, 2004, unless sooner superseded or rescinded.

Issued in Washington, DC, on July 1, 2002.

/s/

Louis C. Cusimano
Acting Director, Flight Standards Service